

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 2685	DATE	8/10/2004
CASE TITLE	USA vs. Andrew Traeger		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Enter Memorandum Order. Accordingly both motions are denied. (14-1, 14-2) As indicated in the preceding paragraph, however, such denial as to the second filing is without prejudice to Traeger's ability to seek leave from the Court of Appeals to proceed with a second Section 2255 motion.

- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.		U.S. DISTRICT COURT CLERK'S OFFICE 420 W. Wacker Drive Chicago, IL 60606 Date/time received in central Clerk's Office	Document Number number of notices AUG 11 2004 dated docketed docketing deputy initials 8/11/2004 date mailed notice SN mailing deputy initials
SN	courtroom deputy's initials		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
AUG 11 2004

MEMORANDUM ORDER

Andrew Traeger ("Traeger"), like the Energizer Bunny, keeps going and going and going. Since this Court most recently issued its short July 20, 2004 memorandum order denying reconsideration of its July 8 memorandum opinion and order that had denied Traeger's 28 U.S.C. §2255¹ motion, it has received two more filings from Traeger, respectively captioned "Motion To Leave For Reconsideration of the Court's Memorandum Opinion and Order" and "Motion To Leave For This Court To Consider Jurisdiction of the Indictment."

It seems quite certain that the first of those filings and this Court's July 20 memorandum order crossed in the mails: Although the motion did not arrive in the Clerk's Office until July 26, Traeger's notice of filing states that he placed the document in the legal mailbox at his Terre Haute place of confinement on July 16. In any event, nothing said in that

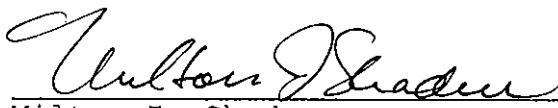
¹ All further references to Title 28's provisions will simply take the form "Section--."

15

initial motion calls for further reconsideration, so the motion is denied.

As for the second and more recent filing, it does not come within the purview of this Court except as a potential Section 2255 motion. But under the Supreme Court's teaching, this Court cannot *sua sponte* relabel the motion as one filed under Section 2255--and if Traeger were to seek to do so, Section 2244(b)(3)(A) requires that he must move in the first instance in our Court of Appeals for an order authorizing this District Court to consider the application.

Accordingly both motions are denied. As indicated in the preceding paragraph, however, such denial as to the second filing is without prejudice to Traeger's ability to seek leave from the Court of Appeals to proceed with a second Section 2255 motion.



Milton I. Shadur
Senior United States District Judge

Date: August 10, 2004